

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

ADAM W. PEET,

Petitioner,

VS.

JULIUS WILSON,

Respondent.

CASE NO. 1:06-CV-10

OPINION & ORDER  
[Resolving Docs. No. 1, 29]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

With this Opinion and Order, the Court decides whether to adopt the Report and Recommendation of Magistrate Judge Nancy A. Vecchiarelli on Petitioner's application for writ of habeas corpus and motion to dismiss the same. [Docs. 1, 29.]

For the reasons presented below, the Court **ADOPTS** the Report and Recommendation of Magistrate Judge Vecchiarelli, **GRANTS** Petitioner’s motion to dismiss, and **DISMISSES** Petitioner’s application for writ of habeas corpus.

## I. Background

On January 4, 2006, Petitioner filed his petition for writ of habeas corpus pursuant to Section 2254 of Title 28 of the United States Code. [Doc. 1.] On January 30, 2006, the Court referred Petitioner's application to Magistrate Judge Vecchiarelli for a Report and Recommendation pursuant to Local Rule 72.2. [Doc. 5.] On May 22, 2007, Magistrate Judge Vecchiarelli held an evidentiary hearing at which Petitioner, his trial counsel, and several other witnesses testified. [Doc. 27.] At

Case No. 1:06-CV-10  
Gwin, J.

the hearing's conclusion, the Magistrate Judge instructed Petitioner to file a notice with the Court, after consultation with his attorney, indicating whether he wished to pursue his habeas petition. *Id.*

On June 5, 2007, Petitioner, through his court-appointed counsel, filed a "Motion to Dismiss Habeas Corpus Petition" and a supporting letter to his attorney indicating Petitioner's desire to withdraw his habeas petition to focus on pursuing early judicial release. [Docs. 29, 29-2.] After review of Petitioner's motion, Magistrate Judge Vecchiarelli recommended that the Court dismiss Petitioner's habeas application. [Doc. 30.] On June 6, 2007, Respondent filed his response to Petitioner's June 5, 2007 motion to dismiss and stated that he "does not object to the granting of [Petitioner's dismissal] motion." [Doc. 32.]

## **II. Legal Standard**

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of the Report to which an objection has been made. *See* 28 U.S.C. § 636(b)(1). Any objections must be filed with the Clerk of Court within ten days of the report's issuance. *Id.* Parties waive their right to appeal the Recommendation if they fail to object within the time allowed. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

## **III. Analysis**

Here, Petitioner filed a motion to dismiss his habeas corpus application following an evidentiary hearing before Magistrate Judge Vecchiarelli. After considering the motion, the Magistrate Judge issued her Report and Recommendation to the Court recommending that Petitioner's application be dismissed. Respondent does not object. Having conducted its own review of the filing, facts, and findings in the case, the Court agrees with the conclusion of Magistrate Judge Vecchiarelli, adopts the Report and Recommendation as its own, and incorporates

Case No. 1:06-CV-10  
Gwin, J.

Magistrate Judge Vecchiarelli's findings of fact and conclusions of law fully herein by reference.

#### **IV. Conclusion**

For these reasons, the Court **ADOPTS** the Report and Recommendation of Magistrate Judge Vecchiarelli, **GRANTS** Petitioner's motion to dismiss, and **DISMISSES** Petitioner's application for writ of habeas corpus.

IT IS SO ORDERED.

Dated: June 7, 2007

s/ *James S. Gwin*  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE